

**Notice of Allowability**

Application No.

09/445,201

Examiner

Daniel M Sullivan

Applicant(s)

BREIER ET AL.

Art Unit

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 22 September 2003.
2. ☒ The allowed claim(s) is/are 1-11, 13, 17-23 and 42-44.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☒ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |                                                                                                        |                                                                                    |
|--------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)                                        | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)         |
| 2 <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 6 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____  | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                 |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance           |
|                                                                                                        | 9 <input type="checkbox"/> Other                                                   |

Art Unit: 1636

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Lisa Haile on 1 December 2003.

The application has been amended as follows:

In the specification:

Please insert the following paragraph as page 56 of the specification:

--

#### Abstract

Described are recombinant DNA molecules comprising the regulatory sequences of an intron of the Endothelial Growth Factor (VEGF) receptor-2 gene (Flk-1) or of a gene homologous to the Flk-1 gene, being capable of conferring expression of a heterologous DNA sequence in endothelial cells, preferably in vivo. Vectors comprising said DNA molecules as well as host cells containing the same are provided. Also provided are pharmaceutical and diagnostic compositions comprising such recombinant DNA molecules and vectors. Furthermore, cells and transgenic non-human animals, comprising the aforementioned recombinant DNA molecules or vectors stably integrated into their genome and their use for the identification of substances capable of suppressing or activating transcription of a gene in endothelial cells are described. Described is further the use of the before described recombinant DNA molecules and vectors for the preparation of pharmaceutical compositions for treating, preventing, and/or delaying a vascular or tumorous disease in a subject. Furthermore, uses of the recombinant DNA molecules and vectors of the invention for the preparation of pharmaceutical compositions for inducing a vascular or tumorous disease in a non-human animal are provided.--

In the claims:

Art Unit: 1636

The claims have been reordered such that claim 42 immediately follows claim 11 and precedes claim 13 in the final sequence of claims. The new claim ordering was necessitated by amendment of claim 13 such that it depends from claim 42.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel M Sullivan whose telephone number is 703-305-4448. The examiner can normally be reached on Monday through Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel, Ph.D. can be reached on 703-305-1998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

DMS

  
DAVID GUZO  
PRIMARY EXAMINER